

HELEN E. DISENHAUS
ATTORNEY-AT-LAW

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June 11, 1997

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JUN 11 1997

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, Room 222
Washington, DC 20554

Federal Communications Commission
Office of Secretary

**Re: Notice of Ex Parte Presentation Concerning Proposed Merger of British
Telecommunications plc and MCI Communications Corporation
(GN Docket No. 96-245)**

Dear Mr. Caton:

Pursuant to Section 1.1206(a) of the Commission's Rules, 47 C.F.R. § 1.1206 (1997), Esprit Telecom Group plc ("Esprit"), by its undersigned counsel, hereby provides an original and one copy of a notice of the attached letter delivered yesterday in connection with the above-referenced proceeding. The letter was delivered during a meeting among David Reibel, General Counsel of Esprit, Helen E. Disenhaus, outside counsel for Esprit, and the following members of the Commission's staff: Kerry E. Murray, Joanna S. Lowery, and Mark Uretsky. Please associate this filing with GN Docket No. 96-245.

During the meeting, in addition to the items discussed in the attached written *ex parte* with respect to this docket, Esprit also urged the Commission to condition any grant of approval of the requested assignments of licenses on the availability of equal access and of access to submarine cable capacity and backhaul facilities controlled by BT and MCI in both the United States and United Kingdom.

Esprit also raised concerns that the proposed addition to the Concert alliance of Telefonica de España, S.A., the dominant carrier in Spain, could adversely affect access by new entrants to the key Rioja cable system between the U.K. and Spain, of which BT and Telefonica are the landing parties, and which is an important route for traffic between the Americas and Spain. The Commission should also condition any grant of approval of the subject applications on the availability of nondiscriminatory access to Rioja capacity and backhaul facilities at both ends, and to any replacement, supplementary, or upgraded facilities related thereto. To the extent that

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Esprit and other new entrants receive adversely discriminatory treatment with respect to obtaining capacity and backhaul facilities, the Concert alliance can gain an advantage with respect to such traffic and further delay timely implementation of the Spanish market entry rights of Esprit and other carriers pursuant to the telecommunications directives of the European Commission and the recent World Trade Agreement on telecommunications. Both of these results would adversely affect competition in the U.S. international services market and make imposition of the prophylactic condition necessary.

Please date-stamp the enclosed extra copy of this filing and return it via our messenger. Should you have any questions please do not hesitate to contact the undersigned.

Very truly yours,



Helen E. Disenhaus
Counsel for Esprit Telecom Group plc

Encl

cc: Peter Cowhey, Chief, International Bureau
Kerry E. Murray, Esq.
Joanna S. Lowry, Esq.
Mr. Mark Uretsky
International Transcription Services, Inc.



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Peter Cowhey, Chief
International Bureau
Federal Communications Commission
2000 M Street, N.W., Room 830
Washington, D.C. 20554

**Re: *Ex Parte Submission Concerning Proposed Merger of British
Telecommunications plc and MCI Communications Corporation
(GN Docket No. 96-245)***

Dear Mr. Cowhey:

On behalf of Esprit Telecom Group plc ("Esprit"), I am writing to urge the Commission to condition its approval of the above referenced merger on the full unbundling of local loops by British Telecommunications, plc ("BT") in the United Kingdom. For the reasons described below, it is essential to preclude an adverse impact on competition in the U.S. market for international services that BT be required to provide unbundled local loop elements to competitors before BT can enter the U.S. market.

Esprit is a public corporation whose shares are traded on the NASDAQ. Esprit, through its subsidiaries, provides liberalized telecommunications services in the U.K., the Netherlands, Spain, France, Germany, Belgium and Ireland. Esprit's U.K. subsidiary also holds a license under Section 214 of the Communications Act of 1934 to originate and terminate facilities-based and resold private line and switched telecommunications services in the U.S. Although it currently provides services primarily over leased lines and will continue to do so in the near future, Esprit is purchasing ownership rights in and constructing international and domestic telecommunications facilities. As a competitor of BT and MCI in the provision of international telecommunications services, Esprit is concerned that approval of the proposed merger not

adversely affect the level of competition in the market for end-to-end international telecommunications services.

BT's acquisition of MCI Communications Corporation ("MCI") would allow BT to self-provision local, domestic long distance, and, significantly, end-to-end international service to customers in the United States and the United Kingdom. Competitors to BT, on the other hand, will still largely be required to rely on BT's services in the United Kingdom. To avoid the anticompetitive effects arising out of this skewed competitive environment, Esprit believes that local loop unbundling in the United Kingdom is critical. In support of this position and based on its experience in local, long distance, and international telecommunications services and the record in this proceeding, Esprit makes the points discussed below.

- **By acquiring MCI, BT will be able to secure a significant position in the long distance and international markets while retaining its dominant position in the U.K.:** Under the merger, the world's third and fifth largest international carriers would merge, and BT would become the second largest long distance and international carrier in the U.S. The combined entity will be free to take advantage of the U.S. local loop unbundling requirement contained in the Telecommunications Act of 1996. Meanwhile, in the United Kingdom, BT enjoys a greater than 90% market share for local telephony, is currently the only ubiquitous provider of local exchange service, and is not required to offer unbundled local loop elements.
- **The merger will enable BT to leverage its market dominance in the U.K.:** Given the significant international market position of BT after the merger and BT's continued dominance in the United Kingdom, BT will have more incentive and a greater ability to leverage its market power in the United Kingdom into the U.S. long distance and international markets and on the U.S.-U.K. route. BT can obtain a significant advantage if competitors do not have the same ability to market and provide end-to-end services to customers, including multinational businesses, because they lack unbundled access to key aspects of BT's local loop services or facilities, while BT can utilize its own ubiquitous networks and the networks that MCI can establish in the United States due to local loop unbundling.
- **Given BT's virtual monopoly on local services, competing carriers need access to unbundled local exchange network elements on a reasonable, nondiscriminatory basis:** Unbundling of BT's local loops is necessary to ensure expeditious development of competition in the U.K. (and, in turn, to prevent competition distortions internationally and on the U.S.-U.K. route). Because of the large capital requirements and time delays to

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construct the necessary infrastructure to enable companies to compete with BT, such competing networks cannot be established overnight. Without unbundled access to BT's network elements, therefore, BT will be able to preserve its market dominance in the U.K. for some time, if not indefinitely, and BT could leverage that dominance in a way that substantially interferes with competition in international and long distance markets.

- **Access to unbundled local exchange network elements is also critical for long term competitive prospects:** Continuation of BT's practice of offering only bundled private leased lines instead of unbundled elements will hinder the development of competition for end-to-end business services between the United States and the United Kingdom. Currently, any of BT's competitors that do not construct their own infrastructure are required to purchase from BT bundled private leased line services to reach customer premises. Private leased lines are often bundled with additional functions and services that increase competitors' costs and delay the provisioning of circuits. Competitors will not be able to provide in a cost effective manner the "tailor made" end-to-end, bandwidth-intensive enhanced services demanded by multinational businesses if they must incur the costs of these unnecessary functions and services bundled with local loops as private leased lines. As a result, BT will have gained an unfair advantage in the provision of end-to-end services between the United States and the United Kingdom by virtue of its control of the local bottleneck in the United Kingdom, and customers will have been deprived of the increased choice of services and providers that are the chief benefits of a competitive marketplace.
- **Unbundling would not discourage the development of alternative infrastructure:** Providing consumers the benefits of local loop unbundling will not unduly interfere with U.K. policies intended to promote the development of British cable company infrastructure to provide telecommunications to residential customers in the United Kingdom. To the contrary, access to BT's unbundled loops should complement the infrastructure development of the Cable & Wireless Companies ("CWC"), or other cable companies, by creating opportunities to expand their networks, service offerings and customer bases. For example, without having to offer unbundled services to third parties, the cable companies could use BT's unbundled loop elements to serve business customers in geographic areas which currently lack alternative infrastructure and to provide interim services to customers not yet served by planned network construction.

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The cable companies could also offer telephony to out-of-franchise area offices of its in-territory customers. If BT provides unbundled local loops, the cable companies can thus more widely compete with BT in these areas even before completing construction of new facilities.

In sum, the complete unbundling of BT's local loops is necessary to preclude the combined BT-MCI entity from leveraging its U.K. market dominance into the U.S.-U.K. market for end-to-end services and services to multinational businesses. Accordingly, Esprit urges the Commission to condition any approval of the BT/MCI merger on BT's full unbundling of local network elements in the United Kingdom.

Should you have any questions please do not hesitate to contact the undersigned.

Very truly yours,



David E. Reibel
Counsel for Esprit Telecom Group, plc

cc: Kerry E. Murray, Esq.
Robert A. Calaff, Esq.
International Transcription Services, Inc.

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ATTORNEY-AT-LAW

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1919 M Street, Room 222
Washington, DC 20554

**Re: Notice of Ex Parte Presentation Concerning Petition of Sprint Spectrum
Partners and Sprint Spectrum, L.P. d/b/a Sprint PCS for Declaratory Ruling**

Dear Mr. Caton:

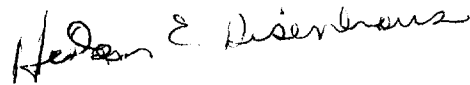
Pursuant to Section 1.1206(a) of the Commission's Rules, 47 C.F.R. § 1.1206 (1997), Esprit Telecom Group plc ("Esprit"), by its undersigned counsel, hereby provides an original and one copy of a notice of an *oral ex parte* presentation with respect to the above-referenced matter. The presentation was made during a meeting among David Reibel, General Counsel of Esprit, Helen E. Disenhaus, outside counsel for Esprit, and the following members of the Commission's staff: Kerry E. Murray, Joanna S. Lowery, and Mark Uretsky.

During the meeting, Esprit discussed with the Commission its efforts to initiate processing of an application for microwave facilities by the French regulator. As noted in previously-filed comments in the docket, Esprit has been told that because more than 25% of its stock is held by U.S. citizens, absent a reciprocal agreement by France and the United States, the application cannot be granted prior to January 1, 1998. Insofar as the subject declaratory ruling request was motivated in part by the degree of investment by France

Telecom in a parent of Sprint Spectrum, L.P., Esprit requests that a grant of the requested Sprint ruling be conditioned on reciprocal waiver of the French foreign ownership restriction as applied to Esprit.

Please date-stamp the enclosed extra copy of this filing and return it via our messenger. Should you have any questions please do not hesitate to contact the undersigned.

Very truly yours,

A handwritten signature in dark ink, appearing to read "Helen E. Disenhaus", written in a cursive style.

Helen E. Disenhaus
Counsel for Esprit Telecom Group plc

cc: Peter Cowhey, Chief of International Bureau
Kerry E. Murray, Esq.
Joanna S. Lowry, Esq.
Mr. Mark Uretsky
International Transcription Services, Inc.